More than we need now, but not enough when we need it most.
The old days
1985
Berries
1992
A promise

Small ball
In the summers of 2015 and 2016, Ecology issued nine interruptible water rights on for withdrawals from the Nooksack River, covering about 2000 acres of farmland previously without a water right.
We all knew that there would be times when the flows would not be met, but during the droughts of 2015 and summer 2016, the farmers were only able to irrigate for about two weeks in June 2016.

What happened?

In summer 2015 the finale of a record low snowpack throughout the state.

In summer 2016 nearly all of the snowpack melted off the mountains in April and May.
We knew that there would be times when the flows were not being met.

<table>
<thead>
<tr>
<th></th>
<th>June</th>
<th>July</th>
<th>August</th>
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<tbody>
<tr>
<td>Minimum Flows</td>
<td>3500 cfs</td>
<td>3000 cfs</td>
<td>1900 cfs</td>
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<td>By Rule</td>
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<tr>
<td>Minimum Flows</td>
<td>1340 cfs</td>
<td>1180 cfs</td>
<td>1010 cfs</td>
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<td>Recorded 2015</td>
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Summer 2015
Two Supreme Court cases – Foster and Hirst

Foster v. Ecology

- We cannot use OCPI* to reserve water for out of stream uses if it impairs a flow-limited stream
- We cannot use out-of-kind mitigation for withdrawals from impaired streams. Must be one-for-one wet H2O

* Overriding Consideration of Public Interest – Swinomish was the first case in the Skagit basin
Two Supreme Court cases – Foster and Hirst

Hirst et al v. Whatcom Co.
Whatcom County must consider effect of exempt groundwater withdrawals in processing home building permits to comply with GMA.

Ecology interprets that the Nooksack Rule does not apply to exempt uses. Whatcom County relied on that interpretation for potable water determination.
Thank you.

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